

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE PEOPLE OF THE STATE OF
 CALIFORNIA,

Plaintiff,

vs.

MARIA ROSARIO METCALF,

Defendant.

CASE NO. 07 CV 1727 JM (RBB)

**ORDER SUA SPONTE
 REMANDING ACTION TO STATE
 COURT**

On August 31, 2007, Defendant filed a Notice of Removal of a criminal case pending against her in San Diego Superior Court. In addition, Defendant apparently seeks to allege a counterclaim under the "Alien Tort Claims Act." Defendant seeks to remove the criminal proceeding pursuant to 28 U.S.C. §§ 1441 and 1446. The court notes that 28 U.S.C. § 1446 does not itself permit removal. Rather, § 1446 sets forth the procedures for removal but does not itself permit removal.


Furthermore, 28 U.S.C. § 1441 only permits removal of civil actions, not criminal actions. 28 U.S.C. § 1441(a) ("Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district where such action is pending."). Here, not only is the action a civil one, but the court lacks original jurisdiction over the state criminal matter identified by Defendant.

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1 Even if Ms. Metcalf were to remove her criminal proceeding under 28 U.S.C. § 1443
2 (permitting removal of certain state court criminal matters), she could not prevail. To invoke federal
3 jurisdiction under § 1443, not only must a criminal prosecution be pending in state court, but the state
4 court defendant must demonstrate that he or she “is denied or cannot enforce in the courts of such
5 State a right under any law providing for the equal civil rights of citizens of the United States, or of
6 all persons within the jurisdiction thereof.” 28 U.S.C. § 1443(1). Upon careful review of the Notice
7 of Removal, Defendant fails to identify any cognizable civil right not enforceable in state court. Thus,
8 pursuant to 28 U.S.C. § 1446(c)(4), this action is summarily remanded to state court. The Clerk of
9 the Court is instructed to close the file.

10 **IT IS SO ORDERED.**

11 DATED: September 7, 2007

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13 Hon. Jeffrey T. Miller
United States District Judge

14 cc: All parties
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